

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

In the Matter of:

FORD MOTOR COMPANY

Respondent,

and

Case No. 07-CA-198075

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IOUE), AFL-CIO

Charging Party,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO and its LOCAL 245

Intervenors.

**BRIEF OF RESPONDENT IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION
AND ORDER OF ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

Respectfully submitted,

/s/ Richard S. Cleary

Richard S. Cleary
rcleary@fbtlaw.com
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363
Telephone: (502) 589-5400
Facsimile: (502) 581-1087
Counsel for Respondent
Ford Motor Company

Catherine F. Burgett
cburgett@fbtlaw.com
FROST BROWN TODD LLC
10 W. Broad Street, Suite 2300
Columbus, OH 43215
Telephone: (614) 256-5653
Facsimile: (614) 464-1737
Counsel for Respondent
Ford Motor Company

Stephen M. Kulp
skulp@ford.com>
Ford Motor Company
World Headquarters
The American Road, Suite 404
Dearborn, MI 48216
Telephone: (313) 322-3571
Counsel for Respondent
Ford Motor Company

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ORDER OF THE ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

I. INTRODUCTION¹

Respondent Ford Motor Company ("Ford") has, for decades, maintained an integrated, flexible, largely mobile maintenance force for its research and testing facilities. The employees in the maintenance group have, for decades, been represented by Intervenor International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW" or "Local 245"). In 2017, Ford brought certain maintenance work being performed at a testing facility inhouse. The employees in that facility had previously been represented by Charging Party, Local 324, International Union of Operating Engineers ("IUOE").

¹Joint Exhibits, Respondent's Exhibits, Intervenor Exhibits, and General Counsel Exhibits from the compliance hearing are parenthetically referenced as "JX-___," "RN-___," "IN-___" and "GC-___," respectively. Transcript pages hearing are parenthetically referenced as "Tr. ___."

Though the General Counsel, the IUOE, and Administrative Law Judge (“ALJ”) David I. Goldman believe Ford was required to bargain with the IUOE when Ford transitioned four former IUOE employees into a group containing greater than five hundred similar UAW maintenance employees, nothing could be farther from the truth. Instead, based on Ford’s collective bargaining agreement (“CBA”) with the UAW and settled Board law related to successorship and accretion, Ford was never a successor employee, and was not required to either recognize or bargain with the IUOE. Even assuming Ford was a successor, the small four person former IUOE group was properly accreted into the predominant UAW unit. Accordingly, Ford requests that the ALJ’s Decision and Order be reversed, and the Complaint against it be dismissed.

II. CASE HISTORY

A. Ford’s Research and Engineering Center is a Multi-Facility Unit which Utilizes a Dynamic, Integrated Staffing Model.

Ford’s Research and Engineering Center (“R&E Center”) is responsible for the research and development of new Ford vehicles. (Tr. at 298:14– 299:1.) The R&E Center consists of a multitude of buildings that belong to one of five core subdivisions, as well as a peripheral sixth subdivision that contains a variety of commercial buildings owned or operated by Ford Land Company (“Ford Land”) which are referred to as the Site Management Operation buildings (“SMO”). (Tr. at 298:12–299:5, 308:3–309:8.) Ford Land Company is a separately incorporated division of Ford Motor Company that owns and/or operates Ford-owned commercial real estate. (Tr. at 302:4–7, 565:18–22, 626:21–24.)

The buildings in the R&E Center which are a part of the five core categories represent *all* of the Ford corporate buildings where research, design, and testing of new vehicles occurs. (Tr. at 298:12–22, 302:10–305:1, 467:7–14.) The SMO buildings, on the other hand, are commercial buildings owned by Ford Land, that are leased to both Ford and non-Ford tenants, and in which testing is *not* performed. (Tr. at 305:2–12, 445:17–446:1, 466:19–467:6; *see* IN-2, map of R&E Center.)

Currently, the R&E Center is comprised of 58 facilities, but the number and composition of the facilities is in constant flux as vehicle testing operations evolve, grow, and are renewed or updated. (Tr. at 298:14-20 – 299:1, 302:1-305:25, 581:15-23.) For decades, Ford has provided the core skilled trades maintenance support for the R&E Center testing operation through its own employees organized as a single, integrated, and flexible support unit. (Tr. at 583:7-584:8, 587:2-589:24, 596:1-597:20.) In this time, Ford has never varied in its singular approach to this maintenance unit: Ford employees working in Ford-owned buildings performing skilled trade maintenance support for R&E testing operations organized in a flexible, integrated, and mobile support unit. (Tr. at 583:7-584:8, 587:2-589:24, 596:1-597:20.)

B. Ford's Longstanding Relationship with United Autoworkers Local 245.

Local 245 has greater than 800 members who work for Ford in Dearborn, Dearborn Heights, Allen Park, and Melvindale, Michigan. (Tr. at 290:23–25, 306:15–307:20.) Approximately 700 of those members are skilled tradespersons. (Tr. at 291:6–8, 293:10–12.) As of October 2017, 526 of these tradespersons were skilled maintenance workers such as carpenters, millwrights, stationary steam engineers, electricians, plumbers, industrial truck mechanics, and refrigeration maintenance and installation technicians (“RMIs”). (Tr. at 292:22–293:15, 295:3–10; IN-1.) Local 245's skilled maintenance workers service the 58 different facilities in the R&E Center and bring life to the flexible, integrated, and mobile maintenance model approach adopted by Ford. ((Tr. at 298:8–11, 583:7-584:8, 587:2-589:24, 596:1-597:20.) Approximately 55–60% of Local 245's skilled maintenance tradespersons are primarily assigned to one of 28 buildings in the R&E Center. (Tr. at 318:16; 319:2–5.) The remaining 40–45% are mobile employees who work in *any* of the 58 buildings in the R&E Center and move between buildings on as an-needed basis. (Tr. at 318:19–319:5, 533:9–17, 547:16–21.) Mobile employees frequently interact and work with stationary tradespersons at all of the R&E Center facilities in order to perform their job duties. (Tr. at 347:8–

22, 508:14–25, 523:24–11.) While the five core categories of R&E Center buildings are *always* 100% Ford occupied and operated and are *always* serviced by Local 245 skilled tradespersons, (Tr. at 451:17–18 (“All corporate buildings that do R&E testing have always been part of Local 245.”), 467:23–468:2), because the SMO buildings are commercial buildings, Local 245 only provides the skilled maintenance at the SMO buildings when the buildings in this sixth subdivision reach at least a 50% Ford-occupancy rate. (Tr. at 445:22–24.) The testing facility at issue in this case is correctly classified as part of one of the five core categories and is not a SMO building.

While Local 245’s CBA permits members to state a shift preference based on seniority, it does not give them a right to bump into specific buildings or to demand either mobile or stationary status. (Tr. at 319:12–15, 321:10–323:15, 549:10–16; IN-16(b), (c).) Rather, whether Local 245 members are mobile or assigned to a particular building is determined solely by Ford-employed managers. (Tr. at 319:6–320:8, 522:12–18, 535:10–14, 590:16–20.) In fact, Ford can and does reassign workers from mobile to stationary status and between buildings. (Tr. at 320:3–323:15, 535:18–19.) An average tradesperson enjoys a 20–25% chance of being reassigned in any given year while some Local 245 members will be reassigned four or five times a year. (Tr. at 321:4–9.) Additionally, both mobile and stationary employees are moved on a short-term basis to respond to emergencies at other facilities. (Tr. at 349:12–350:9.) Likewise, both mobile and stationary tradespersons can be reassigned for special projects such as installing equipment or repurposing a facility. (Tr. at 320:15–24, 523:21–23.)

The staffing model that Ford utilizes at the R&E Center is vitally important to Ford. Not only is it economically efficient and supportive of the integrated design model adopted by Ford, it allows manpower and other resources to be shared across facilities which cuts down on waste and employee downtime. (Tr. at 587:11–22.) For example, one building “might not have a plumbing problem for 2 weeks, but then when ... four plumbers [are needed] . . . [employees] can move from

building to building, then can react very efficiently.” (Tr. at 323:20–24; *see also* Tr. at 323:18–20, 323:25–324:1.) Additionally, through this staffing model, Ford is able to utilize tools and equipment more efficiently. (Tr. at 324:7–21, 588:8–12.) For instance, Ford provides access to 60–70 shared pickup trucks and vans for employees to move between facilities as needed. (Tr. at 318:17–23.) Additionally, certain materials and tools are provided centrally so each facility does not have to stock every tool and every part. (Tr. at 324:7–21, 540:24–541:14, 570:1–2.) Ford’s model results in higher utilization rates for both employees and equipment. (Tr. at 588:13–23.)

The integrated model is further supported by the Local CBA which provides, among other things, that, with certain minor exceptions, overtime is equalized within each trade *across the entire R&E Center*. (Tr. at 317:2–23; *see* IN-16(a).) Additionally, Under the local Overtime Agreement, all the subdivisions of the R&E Center are “considered one overtime group unless otherwise indicated.” (IN-16(a) at ¶ 1.) Thus, Ford enjoys complete discretion as to scheduling overtime assignments, and all tradespersons are expected to work overtime wherever assigned. (Tr. at 339:11–340:7, 537:11–24; *see* IN-16(a).) Overtime equalization often results in even stationary employees working overtime at facilities other than their primary location and leads to employees gaining valuable experience at numerous facilities. (Tr. at 340:8–11, 477:4–5, 481:9–11; 497:2–10, 514:21–23, 524:17–22, 536:10–17, 548:19–21.)

C. Substantive Supervision is Centralized.

To support this integrated model, Ford utilizes a mixed supervisory structure. Front-line supervision is provided in many R&E Center facilities by contractors, many of whom work for a company called CBRE. (Tr. at 341:1–342:1.) In other R&E Center facilities, front-line supervisors are Ford Motor Company employees. (Tr. at 342:1–3.) In either instance, the immediate supervisors are typically not skilled tradespersons: rather, “[t]hey’re basically timekeepers . . . [t]hey have more clerk functions,” and many cannot actually provide technical supervision. (Tr. at 341:16–20; *see also*

Tr. at 342:17–22.) Technical supervision, for the most part, is provided by other Local 245 members who are designated as team leaders. (Tr. at 343:10–25.) Mobile employees consult on-site team leaders when needed, (Tr. at 344:1–9) and employees assigned to a particular building will consult with off-site team leaders when needed, (Tr. at 490:15–24 (describing Local 245’s “support system”), 506:9–12 (team leader Mike O’Malley describing his duties as including assisting his team of both mobile and stationary employees with “any issues, any parts that need to get done”), 527:14–20 (“[T]he way we work at the [R&E] center is that we network with each other, and through the supervisor, to get any assistance that I may need.”). When mobile employees report to a worksite, they generally report to an on-site tradesperson for further information or any necessary orientation specific to the worksite. (Tr. at 346:6–347:22.)

The front-line contractor-supervisors are, in turn, supervised by Ford-employed superintendents. (Tr. at 345:10–346:5; *see* IN-7 (organization chart for Ford Land)). The Ford superintendents have exclusive responsibility for hiring, interviewing, and firing, (Tr. at 348:12–15); for manpower deployment, (Tr. at 346:4–5, 347:23–348:11); for reassigning employees from one facility to another or from mobile to stationary status, (Tr. at 348:4–8); and for deploying employees to respond to maintenance emergencies, which occur on a daily or weekly basis, (Tr. at 349:22–25, 588:24–589:24.) They also have primary responsibility and decision-making authority for promotion decisions, (Tr. at 348:16–22), and for determining what training Local 245 members will receive, (Tr. at 348:23–349:8.) In short, the Ford Superintendents have the true, substantive supervisory authority across the R&E Center.

D. The CBA and Bargaining History Establish the Multi-Facility Nature of the Local 245 Unit is Appropriate.

The national (or master) CBA between UAW and Ford recognizes the multi-facility nature of the Local 245 unit and covers all Ford employees described in the agreement “at each Company

location which w[as] actually covered by the last preceding Agreement.” (IN-15(a) (Art. I, Section 1(b) & (c)). Further, Appendix N describes the “Research & Engineering Center” as a “multi-plant location.” (Tr. at 310:21–311:6; *see* IN-15(c) at p. 244.) It also provides that the R&E Center is broken down into the six subdivisions discussed above. The Local CBA similarly recognizes the multi-facility nature of the unit via the overtime equalization provision discussed above. (Tr. at 316:19–317:24; IN-16(a).)

The multi-facility nature of the R&E Center bargaining unit is also addressed in a series of letters of understanding and other documents between Ford and Local 245. (Tr. at 327:13–25, 328:3, 329:3-23, 332:21-333:18, 334:4-24, 335:5-337:24, IN-3, 4, 5, 6.) Since 1982, approximately 18 new buildings have been added to the R&E Center; in each instance Ford has automatically recognized Local 245 as the representative of the skilled maintenance workers at those facilities, and the work has been integrated into Ford and Local 245’s maintenance model. (Tr. at 337:21–339:10.) Similarly, when a particular building was moved from Dearborn to Allen Park, the site remained in the bargaining unit. (Tr. at 338:23–339:8.) The decades long history between the UAW and Ford, then, envisions and establishes that new buildings, sites, and employees that fit within the maintenance model become part and parcel of the UAW multi-facility unit.

E. Ford Opted to Insource a Testing Facility.

This long practice was continued when Ford opted to bring a wind tunnel testing facility inhouse in 2017. Wind tunnels are vehicle testing facilities and, thus, squarely part of the R&E Center. As such, Local 245 has historically represented all the tradespersons who maintain every Ford owned-and-operated wind tunnel. (Tr. at 354:22–355:20.) The first Ford wind tunnels (tunnels 1 & 2) opened in Dearborn in the 1950s or early ‘60s and were maintained by Local 245 throughout their lifespans. (Tr. at 354:25–355:9.) In the 1970s, Ford added three more tunnels in Dearborn

(tunnels 3–5), and Local 245 has maintained those wind tunnels from the time of their opening until the present day. (Tr. at 304:10–15, 355:10–20; *see* IN-2.)

Then, in approximately 1999, Ford contracted with a company called Sverdrup, which constructed and operated three wind tunnels in Allen Park, Michigan. (Tr. at 355:23–357:4.) These tunnels, which became the DTF, were within walking distance from three R&E Center buildings serviced by Local 245. (Tr. at 357:9–11; 360:16–25.) Sverdrup used a series of outside contractors to perform the skilled maintenance work at the DTF. (Tr. at 58:15–63:3, 358:6–8; GC-16–18, 25–26; IN-8.) In addition to Ford, other automobile and aerospace companies also hired Sverdrup to perform wind tests at the facility. (Tr. at 139:11–22, 254:3–6.) Eventually, Ford began shifting wind tests from its owned-and-operated wind tunnels to the DTF, which led to the closure of tunnels 1 and 2 in 2004. (Tr. at 358:9–19.) Ford continued using the DTF through a series of contractor/owner changes.

In December of 2014, however, Local 245 learned that Ford had purchased the DTF facility from Sverdrup but was continuing to use an outside contractor – Jacobs Industrial Services, Inc. – to provide skilled maintenance at the facility. (Tr. at 358:24–360:8, 571:1–4; GC-17.) Because the DTF had become a Ford-owned research and engineering facility doing work solely for Ford, Local 245 believed that its members were contractually entitled to the skilled maintenance work. (Tr. at 360:9–15.) Put another way, Local 245 believed the work at the DTF was clearly bargaining unit work. Paul Vergari, Local 245’s Chairman, raised the issue with Ford during the 2015 CBA negotiations. (Tr. at 362:1–363:23.)

As part of that process, it was shown that Ford was paying approximately \$4.8 million per year in maintenance costs associated with the DTF. (Tr. at 364:3–11.) Approximately \$2 million was being paid to full-time Jacobs employees who performed some of the steam engineering and electrical work at the facility, and another approximately \$2.8 million was paid to 32 outside

contractors hired by Jacobs to provide the remaining maintenance needs for the facility. (Tr. at 364:11–365:1, 465:25–466:12; IN-8.)² The \$2.8 million paid to outside contractors included work that could have been performed by Local 245 – such as maintenance and repair of heating and refrigeration units, carpentry, millwrighting and plumbing – at a staffing level of 10.6 full time positions. (Tr. at 370:21–373:12-377:7; IN-9; *see* Tr. at 575:14–15.)

The 2015 CBA negotiations between Ford and the UAW resulted in Ford opting to insource the skilled maintenance work at the DTF and recognizing Local 245’s claim that the work was bargaining unit work. (Tr. at 362:19–363:8; IN-16(d).) Ford wanted to ensure, however, that Local 245 performed the work economically and efficiently and without disruption to the testing facility. Thus, although Local 245 believed it was contractually entitled to the skilled maintenance work at the DTF, Ford nominally conditioned the insourcing on Local 245’s ability to perform the work economically and efficiently. (Tr. at 363:9–23.)

F. Ford Hired Some of Jacobs’ Former Employees.

Though Ford was interested in retaining some of the Jacobs’ employees after the insourcing was complete, it was unable to do so without first searching for internal UAW candidates to fill the positions, as required by the Master CBA, Appendix N. (Tr. at 377:13–20; Tr. at 377:21–378:1; *see* IN-15(c).) Ford completed the internally required process and determined that no UAW candidates wanted the DTF positions at that time. (Tr. at 378:25–383:18; IN-10;11.) Having complied with the requirements set forth in the Master CBA, Ford interviewed the former Jacobs employees and, ultimately, hired four of them: electricians John Kurzawa, and Carl Wynn, and steam engineers, Kris Peters and Jesse Miller. (Tr. at 383:6–384:12; IN-11 at 4.) A fifth Jacobs employee, Jason Ricks, was not hired. (Tr. at 74:24–75:1, 114:7-12, 171:17–21, 184:1-2, 239:10-13.)

² Ford notes that while the ALJ classified the source information related to the dollar amount spent by Ford on contractors at the DTF as “hearsay,” that information, which was based on Company documents, is more correctly classified as business records and not barred as hearsay.

During the interviews of the four Jacobs employees, Ford referred the employees to the Local 245 Chairman, Paul Vergari, for more information about job benefits and practices and explicitly told the employees that, as employees, they would be members of Local 245. (Tr. at 115:20–22, 116:12–13, 240:17–241:3, 406:15–407:6.) Each of the Jacobs’ employees were told that, if hired, they would lose their seniority and would be susceptible to being bumped from the DTF by higher-seniority members of their trade. (Tr. at 407:19–408:12; *see* 116:23–117:2, 135:7–18, 189:2–12, 257:3–11.) They were also told that they would be subject to overtime equalization, which would result in their working across the various R&E Center facilities. (Tr. at 407:16–18; *see also* Tr. at 134:6–13.) In fact, when the former Jacobs employees received their offer letters from Ford, the offers made no reference to DTF but, rather, were for employment “at the Ford Land/Research & Engineering Center.” (GC-2–9.) Thus, prior to accepting a position at Ford, the interviewees had been informed that: (1) they would become members of the UAW; (2) they were likely to be displaced from the DTF, and (3) that they should expect to work at many of the 58 buildings in the R&E Center. (*See* Tr. at 115:20–22, 116:12–13, 202:13–203:10, 240:17–241:3, 406:15–407:6.) Mr. Vergari again discussed shift-bumping, seniority, and overtime equalization with the former Jacobs employees during their new-hire orientation and training on their first day of work at Ford. (Tr. at 419:1–21.) That same day, Mr. Vergari also gave each former Jacobs employee a flash drive with the local and master CBAs between UAW and Ford. (Tr. at 133:13–134:1.)

G. Ford Transitioned DTF to a Ford-Owned-and-Operated Facility.

Ford’s insourcing of the maintenance function at DTF began on April 24, 2017. (Tr. at 384:4–5.) At that time, the skilled trades support work at the DTF was integrated into the long-standing (and only) support model Ford has ever used within the R&E Center. (Tr. at 361:1–373:22, 570:7–17–572:9–25, 587, 592:8–24.) In other words, Ford abandoned the contractor model that had previously been in place at the DTF and to which the former Jacobs employees had been subject. In

doing so, and in addition to the four former Jacobs employees Ford hired, Ford also transferred two Local 245 steam engineers, George Dusaj and Carl Smith, to the DTF. (Tr. at 384:10–14.) Thus, DTF went from a facility run by a company which provided maintenance personnel to a Ford owned-and-operated, integrated testing facility.

Ultimately, based on its assessment of the DTF operation, Ford planned to staff ten full time positions at the DTF. (Tr. at 386:8–25, 428:5–429:7, 459:1–4, 576:5–11.) Indeed, Ford Land’s formal budget for fiscal year 2017 budgeted for ten full-time Local 245 skilled tradespersons to be staffed at the DTF. (Tr. at 576:21–577:17, 579:9–581:14; RD-1.) The budget was approved both by the chairman and the operating committee of Ford Land. (Tr. at 577:18–578:3.) Ford did not immediately staff all ten budgeted tradespersons at the DTF, but, rather, opted for a gradual ramp-up to allow time for adjustment, cross-training, and to decide which trades most needed to be staffed at the facility rather than serviced by mobile crews. (Tr. at 386:22–25; *see also* Tr. at 581:15–582:10; 583:20–584:11.)

Because Ford has yet to be able to increase the staffing at DTF from six tradespersons to the planned ten tradespersons, DTF employees have seen increased overtime hours and increased attention from the mobile Local 245. (Tr. at 424:15–17, 583:7–584:8, 584:12–25.) For example, Mr. Peters now works 16 additional hours of overtime every week while Mr. Kurzawa works between 10 and 26 additional hours per week. (Tr. at 275:14–19, 154:1–4.) Indeed, it is commonly believed that DTF is significantly understaffed with only six skilled tradespersons. (Tr. at 492:18–493, 542:4–17, 572:17–18, 575:3–8.) Ford has “always” anticipated resolving the problem by shifting to a seven-day operations model and assigning additional tradespersons to the DTF on or before January 1, 2018. (Tr. at 585:8–586:6.)

Meanwhile, Local 245 skilled tradespersons have been performing significant amounts of maintenance work at the DTF, including millwrighting, carpentry, plumbing/pipefitting, and truck

repair – many of the same functions formerly contracted out by Jacobs. (Tr. at 166:4–11, 209:23–210:7, 210:11–17, 395:16–396:4, 406:9–13, 488:9–14.) Further, among other tasks, mobile tradespersons have revamped a rollup door to comply with Ford safety specs, fixed cranes, inspected floor hoists, maintained high-low vehicles, and repaired a water main break. (Tr. at, 210:22–211:4, 211:5–12, 395:21–25, 408:13–25, 487:11–18, 602:18–603:12.) Additionally, Local 245 RMIs have also worked at DTF. (Tr. at 210:16–17, 487:19–23, 509:16–17.) The RMIs’ work includes the maintenance and installation of heating and cooling equipment. (Tr. at 487:24–488:3, 505:2–16, 507:5–15.) Among other tasks, a team of two RMIs spent up to four weeks inspecting every piece of refrigeration and cooling equipment at the DTF to ensure compliance with Ford’s more rigorous safety standards. (Tr. at 211:20–212:14, 509:20–510:5, 511:13–22.) These RMIs have also been instructed to train the former Jacobs employees on how to maintain heating and cooling equipment to Ford standards. (Tr. at 511:8–13; IN-17.)

H. The Launch Agreement.

Prior to the transition, UAW and Ford negotiated a “Launch Agreement” to guide the transition process during its first year and to promote industrial peace and stability. (Tr. at 385:1–12, 387:19–388:1; GC-28.) By its own terms, the Launch Agreement was only to apply for one year. (GC Ex. 28 at 1.) Among other provisions, the Launch Agreement addressed shift-bumping at the DTF during the first year and permitted bumping by tradespersons staffed elsewhere, but only once the would-be bumper had completed a training session at the DTF. (Tr. at 390:15–391:16; GC-2 at 2.) Under the bumping provision, any trained steam engineer or electrician who requested a shift change would likely displace one of the former Jacobs employees as the former Jacobs employees are currently the lowest seniority members of their respective trades in Local 245. (Tr. at 391:14–392:15, 393:17–394:11.) It is anticipated, then, that some former Jacobs employees will be displaced

during the next round of bumping, as more Local 245 members will be trained at the DTF than in the last round of bumping in August 2017. (Tr. at 391:14– 393:12.)

The Launch Agreement also called for weekly meetings between Local 245 and Ford to implement the transition. (GC Ex. 28 at 1.) These meetings were attended by Mr. Miller, one of the former Jacobs employees who relayed the information discussed to other employees assigned to DTF. (Tr. at 204:20–205:1, 205:17–206:6, 266:12– 21, 395:15–396:4.) They were also attended by a contractor-supervisor, and by Eric Gerling, a higher-ranking Ford-employed superintendent with supervisor authority. (Tr. at 204:22–205:9, 394–95.)

I. Ford Began Training Efforts at the DTF.

Once the transition began, the former Jacobs employees were assigned to train the transferred Local 245 members. The training consisted of the transferees shadowing the former Jacobs employees to become acquainted with the equipment and layout at the DTF. (Tr. at 483:17–484:25.) This training was primarily for developing “systems familiarity” and did not require the Local 245 transferees to use new tools, techniques, or processes. (Tr. at 136:4– 9, 217:2–10, 217:17–25, 430:11–18, 431:24–432:5, 483:17–484:25.) This shadowing process continued until approximately July of 2017. (Tr. at 484:16–18.) Thereafter, in August of 2017, the skilled tradespersons stationed at the DTF, including the Local 245 transferees, began providing similar training to other Local 245 members. (Tr. at 135:19–12, 213:10–215:4, 488:15–489:11, 544:4, 551:6–7.) The transferees were informed from the outset that once they completed their own training, they would be assigned to provide training to others in Local 245. (Tr. at 488:18–20.) Each training session lasts between a few days and two weeks, depending on the needs of the trainee. (Tr. at 155:21–24, 214:5–12, 392:3–5, 415:9–11, 430:11–18, 431:24–432:5, 490:25–491:14, 525:20–22, 551:8–10.) In addition to learning the facility, the “trainees” – who are certified and licensed steam engineers and electricians – also assist with repairs, maintenance, and other tasks during their training time. (Tr. at 136:21–137:7, 155:21–24,

392:3–6, 539:21–540:7.) The training is fairly common to that which is required when an employee transfers to a new building and includes systems familiarity training that explains the location and idiosyncrasies of the systems and equipment in the facility. (Tr. at 489:21–490:20, 526:5–19, 527:21–528:5, 541:15–24, 551:25–553:13.)

Steam engineers Kris Peters, Jesse Miller, and George Dusaj have all trained other steam engineers. (Tr. at 136:10–12, 213:4–11, 489:12–18.) At the time of the hearing, at least 13 steam engineers and 9 electricians had been trained at the DTF. (Tr. at 409:10–411:18, 414:11–415:17, 596:18–23; IN-13, 14.) Getting Local 245 tradespersons trained in the DTF is important to Ford, and all mobile electricians have been told that they are expected to complete the training. (Tr. at 538:24–539:1, 597:1–20.) Once an electrician or steam engineer has completed the training, he or she is eligible to work overtime at the DTF. (Tr. at 417:12–20.) And, indeed, Local 245 tradespersons have worked overtime shifts at the DTF. (Tr. at 492:7–14; 528:13–24, 550:2–23.)

J. Ford Implemented a Renewed Emphasis on Safety.

There has been a new emphasis on safety at the DTF since the transition. (Tr. at 396:1–398:10, 422:4–423:25, 454:4–15.) As a contractor, Jacobs was not held to Ford’s stringent safety standards; and, since the insourcing, Local 245 members have “f[ound] so many things that are not up to Ford standards and nobody there . . . understood what Ford standards were.” (Tr. at 456:7–10; *see also* Tr. at 512:20–513:7.) The former Jacobs employees now receive unit-wide emails from Ford advising them of Ford safety standards. (Tr. at 142:18–143:19, 215:21–216:6.) Further, two former Jacobs employees have received personalized, hands-on training on Ford combustion safety standards — information those employees had not previously received. (Tr. at 211:20–212:4, 218:1–8, 254:7–255:9, 514:12–15; IN-17.) Each former Jacobs employee also attended a roughly week-long new-hire orientation and training session during which safety issues were discussed in detail. (Tr. at 215:17–

20, 266:25–267:2, 419:25–420:23.) They have also each received separate “arc flash” training on avoiding electrical arcs. (Tr. at 215:11–15, 267:8, 421:17–25.)

In addition to the other safety upgrades and initiatives implemented by Ford during the insourcing, Ford has been working to implement its placard system at the DTF. Ford rules require that all equipment have placards describing how to shut down the equipment before performing work on it. (Tr. at 396:1–397:11, 397:20–22.) These placards are particularly important as they allow skilled tradespersons who are not assigned to a particular building, such as mobile crews and overtime fill-ins, to maintain the equipment efficiently and safely. (Tr. at 397:12–19.) The placarding process has involved detailed collaboration between mobile Local 245 members and the six individuals staffed at the DTF. (Tr. at 398:1–11.)

K. Ford’s Transition to a New Computer System.

Further, since insourcing, Ford has begun to transition the DTF from Jacobs’ old computer work order system, CWorks, to the system used by the rest of the R&E Center, Service Insight. (Tr. at 203:17–22.) The transition did not begin immediately because a new version of Service Insight was released shortly after the insourcing began, causing Ford to wait until the new software was operational before beginning the transition. (Tr. at 400:12–401:4, 403:18– 404:6.) The software transition is proceeding but is extraordinarily labor intensive and time-consuming. (Tr. at 203:17–204:5, 404:7–19, 469:13–17.)

L. Ford Limits Working Outside of a Trade.

Finally, part of the transition to the Ford/Local 245 labor model involves ensuring that employees primarily perform work within their trade. Under Jacobs’ operation, skilled tradespersons regularly performed the work of other trades. (Tr. at 208:8–24.) As part of the insourcing, this practice is changing. For example, Mr. Kurzawa, an electrician, acknowledged that prior to the transition, he sometimes performed the work of a steam engineer—including

covering entire shifts for steam engineers. (Tr. at 271:22–273:11; *see also* Tr. at 262:11–22, 277:7–9.) Since the transition, this does not occur. *Id.*

M. Procedural History.

On April 13, 2017, the Charging Party, IUOE Local 324, requested recognition from Ford and demanded that Ford bargain with it as a successor employer. (GC-12.) Ford declined, informing IOUE Local 324 that Local 245 represented any Ford-employed maintenance workers at the DTF. (GC-13.) On May 3, 2017, IUOE Local 324 filed unfair labor practice charges against Respondent Ford Motor Company, alleging violations of Section 8(a)(1) and 8(a)(5). The General Counsel issued a complaint on July 26, 2017, listing Local 245 of the UAW as an Interested Party, and alleging that Ford violated Sections 8(a)(1) and 8(a)(5) by refusing to bargain with the Charging Party. The complaint does *not* allege that Ford violated the National Labor Relations Act (“the Act” or “the NLRA”) by unilaterally changing the terms and conditions of employment.

A merits hearing was held in Detroit, Michigan on November 6 through November 8, 2017. At the hearing, the International Union, UAW, and its Local 245, orally moved to intervene. The motion was granted. (Tr. at 22:12–23:15.) At the close of the hearing, Judge Goldman ordered that briefs be filed by December 13, 2017. UAW filed an unopposed motion requesting that the briefing deadline be postponed to December 22. The motion was granted. After briefing was complete, ALJ Goldman issued his decision on February 8, 2018.

III. QUESTIONS PRESENTED

Ford submits the following questions for review, based on the Company’s Exceptions: (A) Whether the ALJ erred in finding that Ford violated Sections 8(a)(1) and 8(a)(5) of the Act by refusing to recognize and bargain collectively with the IUOE; (B) Whether the ALJ erred in finding that the unit proposed by the General Counsel constituted an appropriate unit for collective bargaining within the meaning of the Act.

IV. LAW AND ARGUMENT

A. Ford was not a Successor Employer. (Related to Exceptions 1-6, 8-9, 11-14, 16-17, 19-30, 33-41, 43, 46-47, 49-50, 59-60, 61, 63, 64, 66, 70, 74-75, 77, 79, 84-85, 91-93, 97, 99, 100-102).

Despite the ALJ's finding to the contrary, Ford was not a successor employer. The threshold test for determining successorship is: (1) whether a majority of the new employer's work force in an appropriate unit are former employees of the predecessor employer; and (2) whether the new employer conducts essentially the same business as the predecessor employer. *See GFS Bldg. Management, Inc.* 330 NLRB 747 (2000); *Sierra Realty Corp.*, 317 NLRB 832 (1995) The four formerly-IUOE employees simply do not constitute a majority.

In the instant case, after exhausting the internal process required by the CBA between Ford and the UAW, Ford hired *four* former Jacobs steam engineers and electricians into its R&E Center operation. Those *four* employees were not hired to work exclusively and permanently at the DTF. Rather, those *four* employees joined with the over *five-hundred* skilled tradespersons already employed by Ford in the R&E Center.

It is uncontested that, since insourcing, the skilled maintenance work at the DTF is performed by a *mix* of the six tradespersons staffed at the DTF and a revolving mix of Ford-employed mobile tradespersons. Indeed, in just six months of an integrated unit, multiple mobile skilled tradespersons from Local 245 performed a variety of maintenance work at the DTF including millwrighting, carpentry, plumbing/pipefitting, truck repairs, and inspection and maintenance of the heating and cooling equipment. It is also uncontested that at any time, *any* Local 245 skilled tradesperson can be assigned to the DTF to do maintenance work or to respond to maintenance emergencies. Finally, it is uncontested that Ford is able – at any time following the expiration or cancellation of the Launch Agreement – to assign the *four* former Jacobs employees to any other facility or mobile unit.

Thus, properly evaluated, the appropriate bargaining unit consists of all 526 skilled tradespersons in the DTF. When properly evaluated, it is clear that the *four* former IUOE represented employees do not constitute a majority of the unit to which they truly belong, and Ford cannot be a successor.

Tellingly, the ALJ is only able to conclude that the unit consists of six employees by gerrymandering his description of the bargaining unit to describe a unit different than the one for which IUOE Local 324 requested recognition. Indeed, under the CBA between Jacobs and IUOE Local 324, the bargaining unit consisted of “*all* Operating Engineers [i.e., steam engineers in Ford’s terminology] and Electricians, employed by the Company at [the DTF], in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF.” (GC Ex. 18 at 1 (Art. I, Section I) (emphasis added).) Local 324’s demand to Ford for recognition and bargaining described the unit in exactly the same terms. (See GC Ex. 12.) Thus, both the CBA between Jacobs and the IUOE and the IUOE request for recognition described the bargaining unit as including “*all* Operating Engineers and Electricians” employed at the DTF by the Company – a description that would include mobile Local 245 tradespersons when they are working at the DTF. (GC Exs. 12, 18 (emphasis added)). Further, the same description *limited* the unit to Operating Engineers and Electricians who worked in “the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery.”

Perhaps in tacit recognition of this fact, the General Counsel contended for the first time *at the hearing* that the successor unit should consist of not *all* operating engineers and electricians, but, rather, “[a]ll *full-time and regular part-time* operating engineers and electricians employed by the Respondent at the [DTF] engaged in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF *in the performance of general building maintenance*.” Compl. ¶ 9, as amended by the General Counsel (emphasis added).

It is only by adding the italicized language to the definition of the requested bargaining unit that first the General Counsel, and then the ALJ, was able to both bring the former Jacobs represented IUOE employees into the requested unit definition while still attempting to artificially restrict the size of the unit to *just* the six employees regularly staffed at the DTF thereby ignoring (1) the original unit definition put forth by the IUOE and the General Counsel, (2) the staffing model utilized by Ford and Local 245 and into which the four former Jacobs' employees were hired, and (3) the reality that far more job classifications are needed to perform "general building maintenance" than just operating engineers and electricians. *See R & M Elec. Supply Co.*, 200 NLRB 603, 615 (1972) ("Where a union had requested recognition for a unit in which it does not have a majority, a violation of Section 8(a)(5) cannot be based upon an ex post facto finding of majority in an appropriate unit for which bargaining had not been requested."). Indeed, it was uncontested that "general maintenance" at DTF would include, at least, the work of millwrights, plumbers, and pipefitters. (Tr. at 581, 584.) Thus, any appropriate unit at the DTF must include the more than just the two job classifications requested by the General Counsel and approved by the ALJ.

This attempt to gerrymander the unit is not only prejudicial but wholly inappropriate in light of the fact that the four employees upon which the ALJ focuses represent only the slimmest possible majority in the proposed unit such that their majority would be utterly destroyed by only the slightest expansion of the unit. It is even more inappropriate in light of the uncontested evidence that the UAW mobile workforce has had regular interchanges with the employees staffed at the DTF, including training the DTF-based members, seeking assistance from DTF-based members while completing work orders, Tr. at 397:20–398:11, 511:24–512:5, and reporting to DTF-based members to coordinate planned work at the facility, Tr. at 210:7–21, 219:13–220:1.

Thus, even assuming it was not wholly inappropriate to add “general maintenance” to the unit definition without expanding the job classifications – which it was – the ALJ’s holding must still fail as he erroneously treated the unit as consisting of only six employees. Instead, the unit, properly defined, is much larger than six employees such that IUOE Local 324 never represented a majority of the unit. *See R & M Electrical*, 200 NLRB at 615; *cf. Ryder Sys., Inc.*, 280 NLRB 1024, 1050 (1986) (rejecting, in a successorship case, an employer’s attempt to modify a recognition clause referring to “all” drivers at a particular location to instead describe “all full time” drivers—and stating that the suggested revision “varies unnecessarily from the language of the certification”), *enf’d. N.L.R.B. v. Ryder Sys., Inc.*, 842 F.2d 332 (6th Cir. 1988) (table op.). Under a proper definition of the unit, then, Ford was never a successor employer.

B. There is no Substantial Continuity Between Jacobs and Ford. (Related to Exceptions 1-10, 13-16, 18-38, 42-43, 45-48, 50-60, 62-66, 69-70, 75-77, 78, 80, 85, 100-02).

In addition to establishing a majority of employees in a “substantial and representative complement,” in an appropriate bargaining unit, there must be a “substantial continuity” between the two enterprises.” *Van Lear Equip.*, 336 NLRB 1059 (2001) at 1063 (quoting *Fall River Dyeing & Finishing Corp. v. N.L.R.B.*, 482 U.S. 27, 41–43 (1987)). The substantial continuity inquiry requires an examination of the “totality of the circumstances” including “whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.” *Fall River*, 482 U.S. at 43. The touchstone of this multi-factor analysis is “whether ‘those employees who have been retained will understandably view their job situations as essentially unaltered.’” *Id.* (quoting *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973)).

Numerous factors favor a finding that the continuity of the predecessor Jacobs unit has been destroyed in the instant case. First, as a threshold matter, even assuming the ALJ correctly defined the appropriate unit – which he did not do – the entire successorship analysis must be informed by the fact that the *four* former Jacobs employees constitute only the slimmest possible majority in the proposed unit. See *Blazer Corp.*, 236 NLRB 103, 110 (1978) (finding it to be relevant, in a successorship context, that the successor employed “only a bare majority of 10 out of 19 employees” who worked for the predecessor); *P.S. Elliott* (finding it relevant that six legacy employees were assigned to work at the new facility with seven predecessor employees). Had Ford transferred only one additional member of Local 245 to the DTF instead of hiring any of the four former-Jacobs employees, there would be no controversy.

Second, contrary to the ALJ’s assertions, the processes and procedures at the DTF have changed drastically since Ford insourced the work. First and foremost, Jacobs was in the business of supplying maintenance personnel on a contracted basis to both Ford and other customers. (Tr. at 139.) Ford is in the business of designing, testing, and manufacturing world-class automobiles. The two business cannot be compared. Nor can it be legitimately argued that the employees did not understand that their work lives would be dramatically different as Ford employees rather than as contractors to a Ford contractor. While the ALJ argued that the substantial continuity cannot be viewed from the view of the overall companies, evaluating the work done and the understanding of the employees can only be understood by looking at the totality of the circumstances, including the effects of moving from a small contractor to a multi-facility manufacturer like Ford.

Further, it is simply uncontested that numerous skilled tradespersons employed by Ford now perform skilled maintenance at the DTF on an on-call basis in several trades. Under Jacobs, that same maintenance was performed by outside contractors on an *ad hoc* basis. Utilizing contractors to perform work cannot be compared with using an entity’s own employees. As discussed above, it

is further uncontested that some of the mobile tradespersons perform refrigeration/heating work and general building maintenance. It is also uncontested that the mobile tradespersons work and interact with the DTF-based employees when they work at the DTF. Other process changes include Ford's changeover to a new computer system, its dramatically increased emphasis on safety, and its related upgrading of the facility to meet its safety standards – a process being led by mobile staff working *in concert with* the employees assigned to the DTF.

Third, the DTF-based employees' jobs and working conditions have changed in a number of significant ways. Ford actively limits out-of-trade work which Jacobs did not do. Mr. Kurzawa even admitted, though reluctantly and only after confronted with his *Jencks* statement, that since Ford took over, he is now performing primarily electrical work whereas he previously worked entire shifts as a (unlicensed) steam engineer. Ford has also offered the former Jacobs' employees the opportunity to work significant overtime beyond what was previously available to them. Additionally, some former Jacobs employees have been scheduled to work overtime at other R&E Center facilities, only to have unexpected issues result in cancellation. (Tr. at 425:1–12.) The former Jacobs employees have also been assigned a significant new job responsibility: providing systems familiarity training at the DTF both to the two Local 245 transferees and to an ongoing procession of other Local 245 tradespersons. Conversely, the former Jacobs employees have themselves received training in numerous forms including orientation, classes, on-site training from mobile tradespersons, and email updates—on Ford safety standards that were either inapplicable or not implemented when Jacobs operated the DTF. Critically, both sides of the training are part of a deliberate process of facilitating interaction and interchange between the DTF-based employees and other members of Local 245 with the stated goal of ensuring that a large proportion of Local 245's tradespersons are able to work at the DTF as needed, including during overtime shifts.

Additionally, the likelihood of being bumped, while new, is not unexpected for the former Jacobs employees. The job offer letters Ford sent do not even reference the DTF; the letters simply offer “employment at the Ford Land/Research & Engineering Center.” (GC-2-9; *See P.S. Elliott*, 300 NLRB at 1162 (finding no successorship where “[e]mployees are not hired to staff a particular jobsite but are hired based on the overall needs of the company.”); *cf. Van Lear*, 336 NLRB at 1063 (finding continuity for a successor who “unlike *P.S. Elliott Services* . . . hired [employees] for a specific work location”). Further, the former Jacobs employees were told *at the time that they interviewed*, and again on their first day of work at Ford, that they should expect to be bumped out of the DTF. And, since the insourcing began, Mr. Miller has attended weekly meetings that include Local 245 representatives and Ford managers at which the transition is discussed in detail. The fact that these expectations were laid out from the very beginning and reiterated throughout the former Jacobs’ employees’ employment is relevant to the central question of the successorship inquiry, i.e., whether the Jacobs employees should “understandably view their job situations as essentially unaltered.” *Fall River*, 482 U.S. at 43. These expectations also call into question any allegation that the DTF was to operate “business as usual.”

Fourth, the DTF employees’ supervision structure has changed. Just as in *P.S. Elliott*, *Budget*, all hiring and firing decisions for DTF-based employees are made by centralized Ford superintendents who supervise employees at other facilities in the R&E Center. Centralized Ford superintendents are involved in discipline as early as the oral stage of the grievance procedure. (Tr. at 351:12–353:3.) They are responsible for deciding where to staff all Local 245 members, including the former Jacobs employees, both on a temporary and long-term basis. (Tr. at 319:6–323:15, 349:12–350:9, 522:12–18, 535:10–19, 590:16–20.)

By contrast, on-site contractor-supervisors relied on by the ALJ in his decision make no significant personnel decisions, a fact that weighs heavily in rebutting the single-facility

presumption. *See Jerry's Chevrolet, Cadillac, Inc.* 344 NLRB 689, 691 (2005) (single-facility presumption rebutted where local managers “evince[d] only minimal local autonomy” because even though they “possess authority over some day-to-day matters of the [facilities] they manage, they lack substantial autonomy over labor relations and personnel policies and procedures.”).

While true that the DTF-based staff’s first line-supervision comes from contractors who were also in the supervisory chain when Jacobs operated the DTF, these supervisors lack any significant authority over personnel policy, making their role less important to the successorship analysis than suggested by the ALJ. Most of the front-line supervisors are not skilled tradespersons and largely fulfill only a clerical function – e.g. handing out work orders, approving leave requests, etc. (Tr. at 341:16–20.) Throughout the R&E Center, technical assistance and true job-based supervisory oversight comes from team leaders and fellow tradespersons. (Tr. at 343:10– 344:9, 490:15–24, 506:9–12, 527:14–20.)

Finally, because the successorship test is a totality of the circumstance test, the sheer *quantity* of R&E Center buildings serviced by Local 245 cannot be disregarded. It is telling that every Ford-owned building in which vehicle prototype testing occurs is maintained by Local 245. Not only is this fact critically important to the successorship inquiry, but it lends credibility to a fact wholly disregarded by the ALJ – that Ford has always planned to fully integrate the DTF into the R&E Center’s maintenance ecosystem no later than the end of the one-year launch period discussed in the Launch Agreement.

Put simply, the successorship factors, as well as other relevant factors, lead to the conclusion that the continuity of the former unit, which consisted only of a few steam engineers and electricians, has been shattered by merging that small unit into the 500+ person Ford maintenance ecosystem. The skilled maintenance work performed by Ford employees at the R&E Center is not limited to two trades or six employees. The *four* former Jacobs employees

work lives have already been transformed by becoming Ford employees, by a new emphasis of training and safety, additional overtime, employee interaction, and a different management structure. Beyond that which has already occurred, plans have been put into place to more fully integrate the DTF. Under these circumstances, the law of successorship does not, and should not, compel Ford to grant most-favored nation status to six employees among more than five hundred and disrupt a dynamic labor relations model that has served both Ford and Local 245 for decades.

C. Ford has not yet assigned a representative complement of tradespersons to the DTF. (Related to Exceptions, 1-9, 39-41, 44, 46, 48-49, 58-59, 61, 83-85, 90, 91, 93-97).

Additionally, a successorship determination cannot be made until the successor employer has hired a “substantial and representative complement of its workers” into the unit. *MSK Corp.*, 341 NLRB 43, 44 (2004). The Board generally “finds an existing complement to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the job classifications.” *Shares, Inc.*, 343 NLRB 455, 455 n.2 (2004), *enf’d United States v. De La Cruz*, 443 F.3d 939 (7th Cir. 2006) (emphasis added). Indeed, the Supreme Court has recognized that there will be times when an employer must gradually “build its operations and hire employees.” *Fall River*, 482 U.S. at 47.

It is uncontested that Ford initially staffed six skilled tradespersons at the DTF in only two classifications: steam engineers and electricians. It is also uncontested that Ford has “always” intended to staff ten skilled tradespersons at the DTF, and that it specifically budgeted for that level of staffing during 2017. As of the time of the hearing, Ford had not yet assigned the last four tradespersons, in part, because it was still determining what the optimal trades would be for the four remaining budgeted heads. (Tr. at 428:21–429:4.) But the assigned tradespersons will likely include plumbers, millwrights, an additional electrician, and possibly other classifications. (*Id.*; see Resp. Ex. 1.) Thus, although Ford has hired 30 percent of the eventual complement of steam

engineers and electricians, it has not placed anyone into the likely two to three other classifications of tradespersons who will be staffed at the site. As such, Ford has not yet assigned *anyone* into 50 percent or more of the skilled maintenance classifications to be staffed at the DTF. As such, there is not yet a substantial and representative complement of the “eventual” complement of skilled tradespersons at the DTF.

Additionally, given the goal of the successorship doctrine of fostering industrial peace, *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 720 (2001), to penalize an employer who enters into a transition of employees from one employer to another in a thoughtful, careful, and measured way by suggesting that because the employer did not move fast enough or change things quickly enough the employer must be a successor, flies in the face of settled Board precedent. Ford developed a transition plan, articulated that plan to the UAW and the former Jacobs employees, and has been implementing that plan. Ford should not be labeled a successor by sheer virtue of the fact that it did not move as quickly with certain aspects of the integration as the ALJ might have preferred.

Further, this is not a case in which, at the time a bargaining demand is made, it is unclear what the “eventual” unit employees’ union sympathies will be. Rather, the full complement of assigned employees at the DTF will, necessarily, consist of a majority (six out of ten) tradespersons who have long been represented by UAW Local 245. Under these circumstances, the initial six employees should not be treated as a *representative* complement when they plainly do *not* represent the predictable majority view of the eventual full complement.

D. The Multi-Facility Unit is Appropriate. (Related to Exceptions 1, 4 8-9, 13, 16-17, 25-31, 45, 48, 50, 63, 65-75, 77-79, 81-83, 89, 93, 97-98, 100-102).

The ALJ is also incorrect that the DTF should be viewed as a single-location unit. As a general rule, “[s]ingle-location units are presumptively appropriate” in a successorship analysis. *Id.* But, the presumption can be rebutted. The rebuttal analysis “examines a number of factors,

including: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any.” *Jerry’s Chevrolet, Cadillac, Inc.*, 344 NLRB 689, 690 (2005). In essence, the single-facility presumption is effectively rebutted when the “operational structures and practices” of the new employer significantly “differ” from the predecessor employer’s. *P.S. Elliott Servs.*, 300 NLRB 1161, 1162 & n.4 (1990) (quoting *NLRB v. Burns Sec. Serv.*, 406 U.S. 272, 280 (1972)).

For example, in *P.S. Elliott*, a cleaning company that employed 175 employees servicing numerous locations purchased a small cleaning contractor that serviced a particular location using eight employees. The successor company hired seven of the predecessor’s eight employees, and those seven employees continued to work at the same location. *Id.* at 1161. The Board concluded that the new employees were not a separate unit with which the successor employer was required to bargain in light of: the size and organizational structure of the successor employer; the centralization of personnel policies; the existence of identical workplace policies and benefits for all employees; the interchange of other unit employees and their transfer and reassignment between various sites over time (even though the predecessor employees themselves had not yet been transferred); the fact that unit employees were “not hired to staff a particular jobsite”; and the assignment of six legacy employees to the newly acquired site at various points either permanently or on a “fill-in” basis. *Id.* at 1162.

Similarly, the Board has found the single-facility presumption rebutted where a union sought to represent single-facility units consisting of individual Budget-Rent-A-Car offices in the Detroit area. *See Budget Rent-A-Car Sys., Inc.*, 337 NLRB 884 (2002). There, branch managers did not schedule employee overtime without central authorization and had “little or no input into hiring, terminations, serious discipline, transfers, wage scales, merit wage increases, benefits, or other terms

and conditions of employment.” *Id.* at 885. The stores also shared their car fleet inventory, resulting in a “substantial degree of coordination between unit employees from all five stores”; mechanics at one facility serviced trucks from other facilities; and there was “some evidence of both temporary and permanent transfers among the five local market stores.” *Id.* Under both a decades long bargaining history and board law, then, DTF should be considered part of the Local 245 multi-facility unit.

First and foremost, the DTF facility is geographically proximate to other R&E Center facilities where all other facilities involved in the research, design, and testing of new vehicles are represented by the UAW. Indeed, almost all R&E Center facilities are within a four-mile radius. (*See* IN-2.) The DTF, in particular, is within walking distance of three other R&E Center facilities where various skilled tradespersons, including other steam engineers and electricians, work. *See Jerry’s Chevrolet*, 344 NLRB at 960 (finding the ability to “walk from one [facility] to the next” to be a “salient factor” in rebutting the single-facility presumption); *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003) (noting that in *P.S. Eliot* it was “significant . . . that . . . the work locations of the large cleaning firm were not geographically distant from each other and the cleaning firm also assigned other employees to the building at which the seven employees worked”).

Second, there is sufficient similarity of employee skills and working conditions for tradespersons across the entire bargaining unit. It is uncontested that the steam engineers and electricians at the DTF have the same licenses and skill sets as the electricians and steam engineers elsewhere in the DTF. (Tr. at 136:10–137:2, 203:11–16, 491:2–5, 533:20–24.) Every witness who testified about the training Local 245 members have been receiving at the DTF stated that the training addresses systems familiarity with the machines and equipment at the DTF. (Tr. at 136:2–9, 214:2–12, 491:2–9, 539:21–522:7, 526:5–9, 551:25–552:5.) It is the type of training a certified tradesperson would expect when entering any new facility with which he or she is unfamiliar. (Tr.

at 489:21–490:20, 491:22–492:5, 526:10–19, 527:21–528:5, 541:15–24, 552:6–553:13.) There are no special tools or knowledge required to do the skilled maintenance work at the DTF, and the work is similar to the work in other testing facilities within the R&E Center. (Tr. at 391:22–392:6, 485:6–25, 527:21–528:5, 543:5–9, 553:3–9.) The ALJ cited to no contrary evidence.

Third and fourth, the bargaining history between the UAW and Ford dating back decades and the degree of employee interchange discussed above, both weigh heavily in favor of finding the only appropriate unit the multi-facility unit already in existence and relied upon by Ford. Put together, it is clear that the DTF is properly considered part of the Local 245 multi-facility unit, and the ALJ was wrong to attempt to carve out six employees into a separate micro-unit.

E. Even if Ford Is a Successor to Jacobs, the Former Jacobs Employees Have Accreted to the Multi-Facility Local 245 Unit. (Related to Exceptions 2, 5, 8-9, 14, 48, 50, 65, 69, 74-78, 81-82, 86-89, 93, 97-99, 100-102).

Even if Ford is found to be a successor to Jacobs at the DTF – which it is not – the former Jacobs unit has accreted to the existing Local 245 unit. The Board has held that the fundamental purpose of the accretion doctrine is to “preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made.” *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985). Because accreted employees are absorbed into an existing bargaining unit without an election or other showing of majority status, the accretion doctrine’s goal of promoting industrial stability can be in tension with the right of employees to freely choose their bargaining representative. As such, the Board follows a restrictive policy in applying the accretion doctrine. *Safeway Stores*, 256 NLRB 918 (1981); *Wackenhut Corp.*, 226 NLRB 1085, 1089 (1976).

One aspect of this long-standing restrictive policy has been to permit accretion “only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted”

Ready Mix USA, Inc., 340 NLRB 946, 954 (2003)). This test is different than the traditional community-of-interest test that the Board applies in deciding appropriate units in initial representation cases. In the accretion context, “[a] group of employees is properly accreted to an existing bargaining unit when they have such a close community of interest with the existing unit that they have no true identity distinct from it.” *Frontier Telephone of Rochester*, 344 NLRB 1270, 1271 fn. 6 (2005)(quoting *NLRB v. St. Regis Paper*, 674 F.2d 104, 107-108 (1st Cir. 1982)). In determining, under this standard, whether the requisite “overwhelming community of interest” exists to warrant an accretion, the Board will consider many of the same factors relevant to unit determinations in initial representation cases, i.e., integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange. *Compact Video Services*, 284 NLRB 117, 119 (1987).

Generally, the Board accretes one unionized bargaining unit into another if the relative number of employees in the receiving unit is pronounced. See *U.S. West Communications, Inc.*, 310 NLRB 854 (1993) (one unit consisting of 500 employees was accreted into another without an election because the latter was “overwhelmingly predominant with 35,000 employees). Thus, the Board has defined an accretion as “the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit employees and have no separate identity.” *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992) (emphasis supplied); See also *Progressive Service Die Co.*, 323 NLRB 183 (1997). An employer may accordingly incorporate a small unit into an already existing larger collective-bargaining unit without conducting elections, if “the added employees (1) do not constitute a separate bargaining unit, and (2) do not outnumber the

employees who belong to the existing unit.” *SEIU Local 144 v. NLRB*, 9 F.3d 218, 233 (2nd Cir. 1993).

When an employer merges two groups of employees who have been historically represented by different unions, a more nuanced question concerning representation arises, and the Board will not impose a union by applying its accretion policy where neither group of employees is sufficiently predominant to remove the question concerning overall representation. *Boston Gas Co.*, 221 NLRB 628 (1978). In such a case, the Board begins its analysis by asking whether the historical units can be preserved or whether they have become so integrated as to create a “new operation” and thus a new, consolidated bargaining unit. *Martin Marietta Co.*, 270 NLRB 821, 822 (1984). Sufficient functional integration between the units will “obliterate” the old historical units and create a “new operation consolidating two previously separate units of employees.” *Id.*

For example, in *Martin Marietta*, the Board found a new operation had been created by the employer because the operation was physically consolidated under common management and administration with centralized labor relations and an interchange of employees. *Id.* Changed circumstances, and not a new location, was what constituted the “new operation” as previous and distinctly separate identities of the two units were obliterated. *Id.* Both units were employed by the same employer and performed similar functions under common terms and conditions of employment, constituting a “sole appropriate unit.” *Id.*

Thus, “[a]n accretion is simply the addition of a *relatively small group* of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.” *Judge & Dolph, Ltd.*, 333 NLRB 175, 180 (2001) (quoting *Lammart Industries v. NLRB*, 578 F.2d 1223, 1225 n. 3 (7th Cir. 1978)) (emphasis added). Accretion is more favored where the union seeking the accretion “is overwhelmingly predominant” in terms of

its size as compared to the unit that stands to be accreted. *Pergament U.S.*, 296 NLRB 333, 345 (1989).

Each of the accretion factors favors a finding of accretion here. As a threshold point, there is no question that Local 245 is “overwhelmingly predominant” compared with the six individuals assigned to the DTF. *Pergament*, 296 NLRB at 345. Further, two of those six individuals were already members of Local 245, leaving only *four* individuals whose representational status would change as the result of an accretion finding.

There is significant employee interchange by DTF-based employees with other Local 245 members. The very composition of the proposed unit—four former Jacobs employees and two longer-term Local 245 members—demonstrates interchange from the outset, as the Local 245 bare minority brought their own experience with the R&E Center and relationships with other bargaining unit members into the DTF. Further, as already detailed, there is significant interchange between the employees at the DTF and the mobile members of Local 245. This work has also involved mobile tradespersons training the DTF-based employees on Ford safety standards such as combustion safety and placarding, a direct and concrete form of interchange that is also calculated to enable DTF-based employees to perform duties at other R&E Center facilities in the future.

Further, the DTF-based employees have been assigned to lead Ford’s ongoing program to provide one-on-one systems familiarity training at the DTF to other Local 245 members. This provides a constant stream of interchange as trainees shadow trainers for days or weeks at a time. Over 20 steam engineers and electricians have been trained in this way to date, and Ford’s expectation is for many more to receive such training. This training is part of a conscious plan to integrate the DTF into the R&E Center consistent with past business practice. This integration was foreseen from the inception of the insourcing discussions, was included in the Launch Agreement, and is the subject of weekly meetings attended by Ford managers, Local 245 leaders, and former Jacobs employee Jesse

Miller. Additionally, the DTF-based employees have received training, both at orientation and beyond, at centralized locations in groups that include other Local 245 members.

Additional interchange occurs via overtime. Tradespersons from outside the DTF have worked overtime at the DTF, and DTF-based employees have worked overtime elsewhere. *See Novato Disposal Servs.*, 330 NLRB 632, 632 n.3 (2000) (stating that temporary transfers are even stronger evidence of interchange amounting to accretion than permanent transfers). Moreover, like all other Local 245 members, each of the DTF-based employees is subject to being re-assigned to any other facility on either a long- or short-term basis as determined by Ford managers. Further, each DTF-based employee is also subject to being bumped to another R&E Center facility during the shift-preference periods that occur regularly.

There is also shared supervision across the R&E Center, including at the DTF. While true that the first-level contractor-supervisor at the DTF does not supervise employees elsewhere, first-level contractor-supervisors in the R&E Center, generally, are mostly limited to clerical functions. As discussed above, all significant personnel decisions are made by the Ford superintendents who are responsible for multiple R&E Center facilities. These centralized decisions include hiring and firing, interviewing, promotions, grievance handling (even at the oral stage), the determination of whether to assign an employee to mobile or stationary duty, the determination of where to assign stationary employees and when to temporarily redeploy them, the determination of whether and where overtime will be worked, and what safety standards and training to require in the R&E Center.

The other factors also favor accretion. The “integration of operations” factor is demonstrated by the R&E Center’s dynamic staffing model. It is also demonstrated by the shared use of vehicles, equipment, and training. For example, electrician Emanuel Dan described a situation that occurred during his training at the DTF in which he and a former Jacobs employee went to the R&E Center’s

central parts depot to retrieve materials to complete an electrical task at the DTF. (Tr. at 540:14–541:14.) In fact, the very nature of the R&E Center – it takes prototype automobiles through every stage of development from research through testing, (Tr. at 298:12–22, 302:10–305:1, 467:10–14) – demonstrates that the Center is an integrated operation. That integration drives the need for an integrated maintenance workforce: the progress of a vehicle through the Center’s various facilities drives the maintenance staffing needs at those facilities.

As discussed above, the “centralization of management and administrative control” and the “common control of labor relations” factors clearly favor towards accretion. So, too, does the “geographic proximity” factor strongly favors a finding of accretion. As discussed above, the DTF is one of 58 facilities serviced by Local 245, all of which are located within a roughly four-mile radius of each other. More specifically, the DTF is located across the street and within walking distance of three other facilities serviced by Local 245.

The “similarity of working conditions, skills and functions” factor also favors accretion. *See St. Regis Paper Co.*, 239 NLRB 688, 691 (1978) (finding an accretion where “[t]he work performed by the mechanics working out of [one] facility is identical to the work performed by mechanics working out of [a second facility]”), *enf’d in relevant part N.L.R.B. v. St. Regis Paper Co.*, 674 F.2d 104 (1st Cir. 1982). The similarity of work between the DTF and other facilities is fully discussed above

Finally, the bargaining history factor leans towards accretion. While four of the six employees stationed at the DTF have a history of bargaining as a unit with the contractors who provided the maintenance services at the DTF before Ford insourced the work., it is also the case that the other two members of the purported unit have their *own* bargaining history as part of Local 245—as will the additional four skilled tradespersons Ford plans to transfer into the DTF in the immediate future and the over 500 skilled tradespersons in Local 245.

While the instant case may not be the typical accretion case, accretion is appropriate. The unit subject to accretion is minuscule when compared to the much larger, and unquestionably integrated, multi-facility unit that prevails elsewhere at the R&E Center. To suggest that the four employees hired by Ford and placed at the DTF did not accrete to the much larger Local 245 ignores clear Board law and common sense.

V. CONCLUSION

It is alleged that a one person majority among six employees should override the decades old Ford R&E bargaining unit and trammel the collectively bargained job security, seniority, bumping, shift preference, and overtime equalization rights of hundreds of existing skilled trades employees who have always constituted a multi-facility, integrated, and operationally flexible unit within Ford's employment to support Ford's critical vehicle testing operations. Moreover, while fully acknowledging that Ford had the right to establish terms and conditions of employment and the means by which it can most efficiently and properly organize the skilled trade support of its multi-billion dollar vehicle testing operations, the ALJ's holding would eliminate Ford's ability to utilize its R&E Center skilled trade employees in the manner decades of experience has taught is the optimal and most efficient structure. Successorship principles do not support this undemocratic and inefficient outcome. For the foregoing reasons, Ford's Exceptions should be granted, and the ALJ's Decision should be reversed.

/s/ Richard S. Cleary

Richard S. Cleary
rcleary@fbtlaw.com
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363
Telephone: (502) 589-5400
Facsimile: (502) 581-1087
Counsel for Respondent
Ford Motor Company

Catherine F. Burgett
cburgett@fbtlaw.com
FROST BROWN TODD LLC
10 W. Broad Street, Suite 2300
Columbus, OH 43215
Telephone: (614) 256-5653
Facsimile: (614) 464-1737
Counsel for Respondent
Ford Motor Company

Stephen M. Kulp
skulp@ford.com>
Ford Motor Company
World Headquarters
The American Road, Suite 404
Dearborn, MI 48216
Telephone: (313) 322-3571
Counsel for Respondent
Ford Motor Company

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2018 the foregoing was served via electronic filing to the National Labor Relations Board's Office of the Executive Secretary, located at 1015 Half Street SE, Washington, DC 20570-0001, with additional service copies sent as follows:

Robert Drzyzga,
National Labor Relations Board Region 7
477 Michigan Avenue, Room 300
Detroit, MI 48226-2569
(via email at Robert.Drzyzga@nlr.gov)

Amy Bachelder
Sachs Waldman P.C.
2211 E. Jefferson Ave.
Detroit, MI 48207
(via email at abachelder@sachswaldman.com)

William Karges
Phillip Mayor
8000 E. Jefferson Ave.
Detroit, MI 48214
(via email at pmayor@uaw.net)

National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001
(via U.S. mail)

Office of the General Counsel
c/o National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001
(via regular U.S. Mail)

/s/ Richard S. Cleary

Richard S. Cleary